



## **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

3301 Gun Club Road, West Palm Beach, Florida 33406 • (561) 686-8800 • FL WATS 1-800-432-2045 • TDD (561) 697-2574  
Mailing Address: P.O. Box 24680, West Palm Beach, FL 33416-4680 • [www.sfwmd.gov](http://www.sfwmd.gov)

August 24, 2006

Dear Stakeholders and Interested Persons:

**SUBJECT: Rulemaking for 40E-1.659 and 40E-4.091, F.A.C., and Section 4.3.8, BOR**  
**Re: Real Property Conveyances & Restrictions**

Please be advised that the South Florida Water Management District has proposed to amend District Rules 40E-1.659 and 40E-4.091, F.A.C., and Section 4.3.8, BOR. The District proposes to amend 40E-1.659, F.A.C., to incorporate conservation easement forms and a restrictive covenant into the District's rules. The District proposes to amend 40E-4.091, F.A.C., to ensure any conservation easements, restrictive covenants or plat restrictions placed over property included in an environmental resource permit will be consistent with Section 704.06, Florida Statutes. In order to accomplish this purpose and ensure that the District's interests are legally protected, the District proposes to specify the language requirements for plat restrictions and to reference forms incorporated into the rules that will constitute consistency with Section 704.06, Florida Statutes, while still allowing flexibility for site specific factors to be considered in finalizing the documents.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., October 12, 2006

PLACE: South Florida Water Management District Headquarters, B-1 Auditorium, 3301 Gun Club Road, West Palm Beach, Florida 33406

Although Governing Board meetings, hearings and workshops are normally recorded, affected persons are advised that it may be necessary for them to ensure that a verbatim record of the proceeding is made, including the testimony and evidence upon which any appeal is to be based. Persons with disabilities or handicaps who need assistance may contact the South Florida Water Management District Clerk's Office, at (561) 682-2087 at least two business days in advance to make appropriate arrangements.

THE PERSON TO CONTACT REGARDING THE PROPOSED RULE IS: Anita Bain, Director, Natural Resource Management Division, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045, extension 6866 or (561) 682-6866, or by email to [abain@sfwmd.gov](mailto:abain@sfwmd.gov). For procedural questions please contact Jan Sluth, Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045, extension 6299 or (561) 682-6299, or by email to [jsluth@sfwmd.gov](mailto:jsluth@sfwmd.gov). Copies of the forms are located on the District's website at: [my.sfwmd.gov/permitting](http://my.sfwmd.gov/permitting) in the right hand column under "rule development". Copies can also be obtained by contacting Jan Sluth, Paralegal at the contact information provided above.

### *GOVERNING BOARD*

Kevin McCarty, *Chair*  
Irela M. Bagué, *Vice-Chair*  
Miya Burt-Stewart

Alice J. Carlson  
Michael Collins  
Nicolás J. Gutiérrez, Jr., Esq.

Lennart E. Lindahl, P.E.  
Harkley R. Thornton  
Malcolm S. Wade, Jr.

### *EXECUTIVE OFFICE*

Carol Ann Wehle, *Executive Director*

**THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS: 40E-1.659 Forms and Instructions.**

(1) The following forms and instructions are hereby incorporated by reference into this chapter:

Forms 0050A through 1189 (No Changes).

1190 Deed of Conservation Easement (Standard)

1191 Deed of Conservation Easement (Standard Passive Recreational)

1192 Deed of Conservation Easement (Standard Riparian)

1194 Deed of Conservation Easement (Third Party Standard)

1195 Deed of Conservation Easement (Third Party Passive Recreational)

1196 Deed of Conservation Easement (Third Party Riparian)

1197 Restrictive Covenant (Standard)

(2) (a) through (g) No Change.

*Specific Authority 120.53, 218.075, 373.044, 373.113, 373.4136, 373.416, 704.06 FS. Law Implemented 120.53, 218.075, 373.113, 373.4135, 373.4136, 373.416, 704.06 FS. History—New 9-3-81, Amended 12-1-82, 3-9-83, Formerly 16K-1.90, Amended 7-26-87, 11-21-89, 1-4-93, Formerly 40E-1.901, Amended 5-11-93, 4-20-94, 10-3-95, 6-26-02, 8-14-02, 8-31-03, 9-16-03, 9-20-04, 2-12-06,*

**40E-4.091 Publications, Rules and Interagency Agreements Incorporated by Reference.**

(1) The following publications, rules and interagency agreements are incorporated by reference into this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

(a) "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – \_\_\_\_\_ 2-12-06".

(b) through (k) No Change.

(2) No Change.

*Specific Authority 373.044, 373.113, 373.171, 373.413, 704.06 FS. Law Implemented 373.413, 373.4135, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, 704.06 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6-26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 2-12-06, \_\_\_\_\_.*

*(The following represents proposed changes to the document entitled "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District - 2-12-06" incorporated by reference in Rule 40E-4.091, F.A.C.)*

**4.3.8 Real Property Conveyances and Restrictions**

- (a) All conservation easements and restrictive covenants pursuant to Section 704.06, F.S., shall be granted in perpetuity without encumbrances, unless such encumbrances do not have the potential to adversely affect the ecological viability of the mitigation. All liens against the conservation easement area preserved pursuant to Section 704.06, F.S., site shall be released, subordinated to, or joined with the conservation easement or restrictive covenant. All eConservation easements and restrictive covenants shall be consistent with

**Page 3 of 3 Real Property Conveyances & Restrictions**

Section 704.06, F.S.; and shall contain restrictions that ensure the ecological viability of the site.

- (b) Plat restrictions proposed to meet the requirements of Section 704.06, F.S. and Section 4.3.2.2 must contain the language contained in Section 704.06 (1)(a) – (h), F.S. In order to provide reasonable assurance of the preservation of the protected area in accordance with the permit in perpetuity, plat language shall provide the District a third-party right to enforce the restrictions of Section 704.06, F.S., and shall further provide that the Section 704.06, F.S. plat restrictions cannot be altered, released or revoked without the prior written consent of the District.
- (c) The use of Form No(s) 1190-1192 and 1194-1197, referenced in Chapter 40E-1.659, F.A.C., shall constitute consistency with Section 704.06, F.S. Where project specific conditions warrant deviation from the language of the accepted forms, alternative language may be accepted as long as it meets the provisions, purpose and intent of Section 704.06, F.S., and this Basis of Review.
- ~~(d)~~(b) All real property conveyances shall be in fee simple and by statutory warranty deed, special warranty deed, or other deed, without encumbrances that adversely affect the integrity of the preservation objectives. The District shall also accept a quit claim deed if necessary to aid in clearing minor title defects or otherwise resolving boundary questions.

NAME OF PERSON ORIGINATING PROPOSED RULE: Anita R. Bain, Division Director, Environmental Resource Regulation, Natural Resource Management Division

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 9, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:  
July 7, 2006

## SOUTH FLORIDA WATER MANAGEMENT DISTRICT

### RULE TITLE:

Forms and Instructions

### RULE NO.:

40E-1.659

**PURPOSE AND EFFECT:** To incorporate by reference the following forms: a conservation restrictive covenant, conservation easements to be granted to the District allowing for standard, passive recreational, and riparian uses, and conservation easements granted to third parties allowing for standard, passive recreational and riparian uses.

**SUMMARY:** The regulated public will benefit by the incorporation of these forms into the District's rules by reducing review time for both the applicants and District staff reviewers and by ensuring that the forms are consistent with the requirements of Section 704.06, Florida Statutes.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** A Statement of Estimated Regulatory Cost has not been prepared based on the District's determination that the proposed revisions will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

Any person who wishes to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** 120.53, 218.075, 373.044, 373.113, 373.4136, 373.416, 695.03, 704.06 F.S.

LAW IMPLEMENTED: 120.53, 218.075, 373.113, 373.4135, 373.4136, 373.416, 704.06  
F.S.

A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

TIME AND DATE: 9:00 a.m., October 12, 2006

PLACE: South Florida Water Management District Headquarters, B-1 Auditorium, 3301  
Gun Club Road, West Palm Beach, Florida 33406

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THE PERSON TO CONTACT REGARDING THE PROPOSED RULE IS: Anita Bain, Director, Natural Resource Management Division, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045, extension 6866 or (561) 682-6866, or by email to [abain@sfwmd.gov](mailto:abain@sfwmd.gov). For procedural questions please contact Jan Sluth, Paralegal, South Florida Water Management District, Post Office Box 24680, West Palm Beach, FL 33416-4680, telephone 1-800-432-2045, extension 6299 or (561) 682-6299, or by email to [jsluth@sfwmd.gov](mailto:jsluth@sfwmd.gov). Copies of the forms are located on the District's website at: [my.sfwmd.gov/permitting](http://my.sfwmd.gov/permitting) in the right hand column under "rule development". Copies

can also be obtained by contacting Jan Sluth, Paralegal at the contact information provided above.

THE FULL TEXT OF THE PROPOSED RULE IS:

40E-1.659 Forms and Instructions.

(1) The following forms and instructions are hereby incorporated by reference into this chapter:

Form No.	Date	Title
0050A	7-89	Application to the South Florida Water Management District for a Permit for Utilization of District Works or Modification of Existing Permit Works of the District No.
0108	3-91	Application for Release of Mineral, Canal, and Road Reservations Reserved Under Chapters 6456, 6957, 7305, 9131, 14717 and 20658, Laws of Florida
0113	8-95	Surface Water Management Permit No.
0115	8-95	Surface Water Management Permit Modification No.
0119	8-95	Wetland Resource Permit No.
0122	4-93	Application to the South Florida Water Management District for Authority to Utilize Works or Land of the District
0123	4-95	Well Construction Permit Application
0124	11-90	Well Completion Report
0145	8-95	Environmental Resource Permit No.
0157	8-95	Environmental Resource Permit Modification No.

0188-QMQ	8-03	Quarterly Report of Withdrawals
0188-MDQ	8-03	Monthly Report of Daily Withdrawals
0188-QASR	8-03	Quarterly Report of Injections and Withdrawals for Aquifer Storage and Recovery (ASR) Wells]
0188-QMON	8-03	Quarterly Report of Monitoring Requirements
0188-QMQF	8-03	Quarterly Report of Withdrawals from Wells and Surface Water Pumps
0188-QCROP	8-03	Report of Planting and Harvest of Seasonal Crops
0188-QBWDR	8-03	Quarterly Report of Bulk Water Delivered and Received
0195	6-91	Public Water Supply Well Information and Classification
0196	10-89	Water Well Inspection Scheduling Card
0299	1-90	Water Use Permit No.
0444	8-95	Application for a Standard General Permit for Incidental Site Activities
0445	8-03	Mining/Dewatering Permit Application (RC-1A, RC- 1W, RC-1G)
0483	9-04	Request for Environmental Resource, Surface Water Management, Water Use or Wetland Resource Permit Transfer
0645-W01	8-03	Water Use Permit Application (RC-1A, RC-1W, RC- 1G)

0645-G60	8-03	Table A Descriptions of Wells
0645-G61-1	8-03	Table B Description of Surface Water Pumps
0645-G61-2	8-03	Table C Description of Culverts
0645-G65	8-03	Table D Crop Information
0645-G74	8-03	Table E Water Received From or Distributed to Other Entities
0645-G69	8-03	Table F Past Water Use & Table G Projected Water Use
0645-G70	8-03	Table H Projected Water Use (For Per Capita Greater than 200 GPD)
0645-G71	8-03	Table I Water Treatment Method and Losses
0645-G72	8-03	Table J Aquifer Storage and Recovery
0645-G73	8-03	Table K Water Supply System Interconnections
0779	5-92	Guidance for Preparing an Application for a "Works of the District" Permit in the Everglades/Application for a Works of the District Permit
0830	4-94	Special Use Application and License
0881A	9-03	Environmental Resource/Surface Water Management Permit Construction Completion Certification
0881B	9-03	Environmental Resource/Surface Water Management Permit Construction Completion Certification – For Projects Permitted Prior to October 3, 1995

0889	9-04	Certification of Waiver of Permit Application Processing Fee
0920	9-04	Request for Conversion of District Environmental Resource/Surface Water Management Permit from Construction Phase to Operation Phase and Transfer of Permit to the Operating Entity
0941	8-95	Environmental Resource Standard/Noticed General Permit No.
0942	8-95	Surface Water Management General Permit No.
0960	9-04	Environmental Resource/Surface Water Management Permit Construction Commencement Notice
0961	9-04	Environmental Resource/Surface Water Management Permit Annual Status Report for Surface Water Management System Construction
0970	2-04	Applicant Transmittal Form for Requested Additional Information
0971	8-95	Joint Application for Environmental Resource Permit/Authorization to Use State Owned Submerged Lands/Federal Dredge and Fill Permit
0972	8-95	Petition for a Formal Wetland and Surface Water Determination
0973	8-95	Above Ground Impoundment Inspection/Certification Report

0974	8-95	Notice of Intent to Construct a Minor Silvicultural System
0980	8-95	Notice of Intent to Use a Noticed General Environmental Resource Permit
1019	9-04	Mitigation Bank Performance Bond to Demonstrate Construction/Implementation Financial Assurance
1020	9-04	Mitigation Bank Irrevocable Letter of Credit to Demonstrate Construction/Implementation Financial Assurance
1021	9-04	Mitigation Bank Standby Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance
1022	9-04	Mitigation Bank Trust Fund Agreement to Demonstrate Construction/Implementation Financial Assurance
1023	9-04	Mitigation Bank Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance
1024	9-04	Mitigation Bank Standby Trust Fund Agreement to Demonstrate Perpetual Management Financial Assurance
1105	6-02	Performance Bond to Demonstrate Financial Assurance

1106	6-02	Irrevocable Letter of Credit to Demonstrate Financial Assurance
1109	8-03	Water Use General Permit
1189	2-06	Notice of Environmental Resource or Surface Water Management Permit
<u>1190</u>		<u>Deed of Conservation Easement (Standard)</u>
<u>1191</u>		<u>Deed of Conservation Easement (Standard Passive</u>
		<u>Recreational)</u>
<u>1192</u>		<u>Deed of Conservation Easement (Standard Riparian)</u>
<u>1194</u>		<u>Deed of Conservation Easement (Third Party Standard)</u>
<u>1195</u>		<u>Deed of Conservation Easement (Third Party Passive</u>
		<u>Recreational)</u>
<u>1196</u>		<u>Deed of Conservation Easement (Third Party Riparian)</u>
<u>1197</u>		<u>Restrictive Covenant (Standard)</u>

(2) (a) through (g) No Change.

*Specific Authority 120.53, 218.075, 373.044, 373.113, 373.4136, 373.416, 704.06 FS.*

*Law Implemented 120.53, 218.075, 373.113, 373.4135, 373.4136, 373.416, 704.06 FS.*

*History--New 9-3-81, Amended 12-1-82, 3-9-83, Formerly 16K-1.90, Amended 7-26-87, 11-21-89, 1-4-93, Formerly 40E-1.901, Amended 5-11-93, 4-20-94, 10-3-95, 6-26-02, 8-14-02, 8-31-03, 9-16-03, 9-20,04, 2-12-06, \_\_\_\_\_.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Anita R. Bain, Division  
Director, Environmental Resource Regulation, Natural Resource Management Division

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:

South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 9, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:

July 7, 2006

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

RULE TITLE:

RULE NO.:

Publications, Rules and Interagency Agreements

Incorporated By Reference

40E-4.091

**PURPOSE AND EFFECT:** To ensure any conservation easements, restrictive covenants or plat restrictions placed over property included in an environmental resource permit will be consistent with Section 704.06, Florida Statutes.

**SUMMARY:** The District proposes to specify the language requirements for plat restrictions and to reference forms incorporated into the rules that will constitute consistency with Section 704.06, Florida Statutes, while still allowing flexibility for site specific factors to be considered in finalizing the documents.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST:** A Statement of Estimated Regulatory Cost has not been prepared based on the District's determination that the proposed revisions will not result in a substantial increase in the costs to affected parties and there will not be significant adverse effects on competition, employment, investment or productivity.

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**SPECIFIC AUTHORITY:** 373.044, 373.103(8), 373.113, 373.171, 373.413, 704.06 F.S.

**LAW IMPLEMENTED:** 373.413, 373.4135, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, 704.06 F.S.

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THE FULL TEXT OF THE PROPOSED RULE IS:

**40E-4.091 Publications, Rules and Interagency Agreements Incorporated by**

## Reference.

(1) The following publications, rules and interagency agreements are incorporated by reference into this chapter, Chapters 40E-40, 40E-41 and 40E-400, F.A.C.:

(a) "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District – \_\_\_\_\_ 2-12-06".

(b) through (k) No Change.

(2) No Change.

*Specific Authority 373.044, 373.113, 373.171, 373.413, 704.06 FS. Law Implemented 373.413, 373.4135, 373.414, 373.4142, 373.416, 373.418, 373.421, 373.426, 704.06 FS. History—New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.035(1), Amended 5-1-86, 7-1-86, 3-24-87, 4-14-87, 4-21-88, 11-21-89, 11-15-92, 1-23-94, 4-20-94, 10-3-95, 1-7-97, 12-3-98, 5-28-00, 8-16-00, 1-17-01, 7-19-01, 6-26-02, 6 -26-02, 4-6-03, 4-14-03, 9-16-03, 12-7-04, 2-12-06, \_\_\_\_\_.*

(The following represents proposed changes to the document entitled "Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District - 2-12-06" incorporated by reference in Rule 40E-4.091, F.A.C.)

### **4.3.8 Real Property Conveyances and Restrictions**

- (a) All conservation easements and restrictive covenants pursuant to Section 704.06, F.S., shall be granted in perpetuity without encumbrances, unless such encumbrances do not have the potential to adversely affect the ecological viability of the mitigation. All liens against the conservation ~~easement~~ area preserved pursuant to Section 704.06, F.S., site shall be released, subordinated to, or joined with the conservation easement or

restrictive covenant. All ~~e~~Conservation easements and restrictive covenants shall be consistent with Section 704.06, F.S.; and shall contain restrictions that ensure the ecological viability of the site.

(b) Plat restrictions proposed to meet the requirements of Section 704.06, F.S. and Section 4.3.2.2 must contain the language contained in Section 704.06 (1)(a) – (h), F.S. In order to provide reasonable assurance of the preservation of the protected area in accordance with the permit in perpetuity, plat language shall provide the District a third-party right to enforce the restrictions of Section 704.06, F.S., and shall further provide that the Section 704.06, F.S. plat restrictions cannot be altered, released or revoked without the prior written consent of the District.

(c) The use of Form No(s) 1190-1192 and 1194-1197, referenced in Chapter 40E-1.659, F.A.C., shall constitute consistency with Section 704.06, F.S. Where project specific conditions warrant deviation from the language of the accepted forms, alternative language may be accepted as long as it meets the provisions, purpose and intent of Section 704.06, F.S., and this Basis of Review.

~~(d)(b)~~ All real property conveyances shall be in fee simple and by statutory warranty deed, special warranty deed, or other deed, without encumbrances that adversely affect the integrity of the preservation objectives. The District shall also accept a quit claim deed if necessary to aid in clearing minor title defects or otherwise resolving boundary questions.

NAME OF PERSON ORIGINATING PROPOSED RULE: Anita R. Bain, Division  
Director, Environmental Resource Regulation, Natural Resource Management Division

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:  
South Florida Water Management District Governing Board

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 9, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:

July 7, 2006